

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

CRAIG T. CONLEY
220 Market Avenue South
Suite 604
Canton, OH 44702

Plaintiff

vs.

CLAYTON B. SMITH
Inmate No. 55059 060
Federal Correctional Institution
P.O. Box 1000
Morgantown, WV 26507-1000

Defendant

: CASE NO. _____
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: JUDGE: _____
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COMPLAINT FOR JUDICIAL DECLARATION AND INJUNCTIVE RELIEF

1. This is an action seeking a judicial declaration that Defendant Clayton B. Smith ("Smith") is a vexatious litigator and further seeking injunctive relief prohibiting Smith, without prior leave of this Court, from making any further filings in any Federal fora.

PARTIES, JURISDICTION AND VENUE

2. Plaintiff Craig T. Conley ("Conley") resides in and practices law within the jurisdiction of this Court; and Conley is among the many victims of Smith's vexatious litigation conduct as (partially) described hereinbelow.

3. Defendant Smith (although presently incarcerated in a Federal penitentiary in West Virginia) purports to maintain a

residence within the jurisdiction of this Court; and Smith has engaged in vexatious litigation conduct within the jurisdiction of this Court.

4. Venue and jurisdiction herein lie with this Court.

BACKGROUND FACTS AND GENERAL ALLEGATIONS

5. Smith is a twice-convicted Felon, having been duly convicted in Stark County Common Pleas Court Case No. 2002 CR 00215 on one count of passing bad checks, and having thereafter been duly convicted (on "sister" Federal charges) in U.S. District Court for the Northern District of Ohio Case No. 5:05 CR 00419 on two counts of mail fraud, one count of wire fraud and one count of bank fraud.

6. On September 19, 2005, in the aforesaid Federal Court criminal action, Smith entered a disingenuous plea of not guilty; and, on February 24, 2006, faced with overwhelming documentary evidence of his criminally fraudulent conduct, Smith (represented by counsel of his choice at the time) finally "came clean" and voluntarily, knowingly and in open Court, changed his plea to guilty on all four counts of the Indictment, after which he was duly convicted and sentenced.

7. Smith thereafter filed a frivolous Appeal of his sentence in U.S. Court of Appeals for the Sixth Circuit Case No. 06-4157, which frivolous Appeal was denied on July 19, 2007 (as was his subsequent frivolous Motion for *en banc* review).

8. In the interim, on July 28, 2005, the Stark County Court

of Common Pleas, in Case No. 2004 CV 02417, duly found that Smith had intended to and did defraud Conley and that Smith had demonstrated malice and/or egregious fraud as shown by clear and convincing evidence.

9. On December 14, 2007, the Stark County Court of Common Pleas, in Case No. 2003 CV 02854, duly found that Smith's filing and prosecution of his legal malpractice action against Conley "clearly lacked Civ R 11 good ground to support it and further clearly constituted frivolous conduct under O.R.C. 2323.51"; that Smith's "filing and prosecution of [that frivolous] action obviously served merely to harass or maliciously injure Conley"; and that Smith's frivolous conduct "was willful".

10. In the interim, on March 28, 2006, Smith, knowing full well that he did not have the economic means to make payments under his proposed (one percent) Plan, filed a Voluntary Petition under Chapter 13 in U.S. Bankruptcy Court for the Northern District of Ohio, Eastern Division, in Case No. 06-60396.

11. On October 17, 2006, following the Trustee's Motion to Dismiss the aforesaid Chapter 13 Bankruptcy, Smith, left with no choice, filed a Notice of Voluntary Conversion to Chapter 7.

12. In the interim, on June 2, 2006, Smith filed a frivolous Notice of Removal of his aforesaid frivolous State Court legal malpractice action to the U.S. Bankruptcy Court for the Northern District of Ohio, Eastern Division, in Adv. Case No. 06-6102, which

frivolous action was subsequently appropriately and duly remanded back to the Stark County Court of Common Pleas.

13. On February 22, 2008, the Stark County Court of Common Pleas, in Case No. 2007 CV 05220, duly declared Smith to be a vexatious litigator under O.R.C. 2323.52 and permanently enjoined him, without prior leave of Court, from making any further filings in any Ohio Common Pleas, Municipal, County or Appeals Courts or in the Ohio Court of Claims.

14. On March 3, 2008, the U.S. Bankruptcy Court for the Northern District of Ohio, Eastern Division, in Adv. Case No. 07-6022, granted Conley's Motion for Summary Judgment (thereby finding that Conley's aforesaid State Court fraud judgment against Smith was not dischargeable in Smith's Bankruptcy); granted Conley's Motion to Dismiss Smith's frivolous Counterclaim (wherein Smith maliciously had, for the fourth time, sued Conley [as well as, for the third time, another non-party attorney] for legal malpractice); denied Smith's frivolous Motion for Summary Judgment; denied Smith's frivolous "Motion for Fraud"; and denied Smith's frivolous Motion to Compel.

15. Despite all of the aforesaid judicial rulings adverse to Smith, on December 11, 2007 and again on March 3, 2008 and again on March 6, 2008, Smith has threatened (via three letters) to re-institute and/or continue *ad infinitum*, in State and/or in Federal Court, his frivolous and vexatious litigation against Conley and/or

against at least one other of Smith's many victims.

FIRST CLAIM FOR RELIEF

(JUDICIAL DECLARATION)

16. Conley realleges the allegations contained in paragraphs nos. 1 through 15 as if fully rewritten herein.

17. As set forth hereinabove, Smith has, for many years and via a multitude of maliciously frivolous filings in, *inter alia*, Federal Courts within the Northern District of Ohio, habitually, persistently, and without reasonable cause, engaged in frivolous and vexatious conduct.

18. Conley is therefore entitled to a judicial declaration that Smith is a vexatious litigator.

SECOND CLAIM FOR RELIEF

(INJUNCTION)

19. Conley realleges the allegations contained in paragraphs nos. 1 through 18 as if fully rewritten herein.

20. As set forth hereinabove, Smith has threatened to continue his vexatious litigation conduct and will certainly do so if not enjoined by this Court.

21. Conley is therefore entitled to issuance of an order from this Court permanently enjoining Smith from making any further filings in any Federal fora without prior leave of this Court.

WHEREFORE, Conley, on his Claims for Relief, requests the following:

A) On his First Claim for Relief, a judicial declaration that Smith is a vexatious litigator.

B) On his Second Claim for Relief, a permanent injunction barring Smith from making any further filings in any Federal fora without prior leave of this Court.

C) On both of his Claims for Relief, costs pursuant to Fed. R. Civ. P. 54(d); and all such other and further relief in law or in equity to which he may be entitled.

Respectfully submitted,

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